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Office of the Secretary

UNITED STATES GOVERNMENT



memorandum

DATE: July 26, 2005

TO: Office of the Secretary

FROM: Commission Staff

SUBJECT: Implementation of Section 210 of SHVERA to Amend Section 338 of the Communications Act – MB Docket No. 05-181

Commission Staff believes that the attached pleadings and comments filed in IB Docket No. 98-21 and CS Docket No. 01-348 may be relevant to the issues under consideration in the Commission's rule making proceeding, MB Docket No. 05-181, referenced above. Accordingly, Commission Staff submits copies of the pleadings and comments into the record for consideration by the Commission.

The pleadings and comments include the following:

1. Letter from Fran Ulmer, Lieutenant Governor of the State of Alaska, IB Docket No. 98-21 (Aug. 13, 1999);
2. State of Alaska Supplemental Reply Comments, IB Docket No. 98-21 (filed Jan. 18, 2001);
3. Letter from Robert Halperin, Counsel for the State of Alaska, IB Docket No. 98-21 (Aug. 24, 2001);
4. Letter from Herbert Marks and Bruce Olcott, Counsel to the State of Hawaii, IB Docket No. 98-21 (Jan. 11, 2002);
5. State of Alaska Comments, CS Docket No. 01-248 (filed Feb. 4, 2002).

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1.

**Letter from Fran Ulmer, Lieutenant Governor of the
State of Alaska, IB Docket No. 98-21 (Aug. 13, 1999)**

MB DOCKET NO. 05-181

ORIGINAL



STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

TONY KNOWLES
GOVERNOR

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AUG 13 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 13, 1999

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB204
Washington, D.C. 20021

Re: Policies and Rules for the Direct Broadcast Satellite Service,
IB Docket No. 98-21

Dear Ms. Salas:

This letter is being filed, in duplicate, to report that a copy of the attached letter, dated August 13, 1999, is being delivered by hand to Chairman Kennard, from Fran Ulmer, the Lieutenant Governor of the State of Alaska.

Should there be any questions regarding this matter, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "John W. Katz".

John W. Katz
Special Counsel to the Governor
Director, State/Federal Relations

Enclosures

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EX PARTE OR LATE FILED

FRAN ULMER
Lieutenant Governor
STATE OF ALASKA

August 13, 1999

RECEIVED

AUG 13 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE LETTER

Chairman William E. Kennard
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, DC 20024

Re: Policies and Rules for the Direct Broadcast Satellite Service,
IB Docket No. 98-21

Dear Chairman Kennard:

We write to you concerning a matter of great importance to the citizens of the State of Alaska, the provision of direct broadcast satellite (DBS) services.

As you know, the Commission has long recognized its responsibility under the Communications Act of 1934, as amended, to promote the provision of communications services to all portions of the United States, including off-shore points such as the State of Alaska.¹ The Commission has taken a variety of steps over the years, including the adoption of geographic rate averaging and rate integration policies, to promote the provision of communications services to Alaskans on terms that are no different than those which apply to the provision of services to other Americans. Underlying the Commission's efforts in this area has been the recognition that communications services are a critical tool for the social, political, educational, and economic integration of the Nation.

In 1995, the Commission sought to promote the delivery of DBS services to Alaska and Hawaii by adopting a rule that required all new permittees to provide service to Alaska and Hawaii if such service is technically feasible from

¹ 47 U.S.C. § 151.

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their orbital locations and to condition the retention of channels assigned to then-current permittees at western orbital locations on the provision of such service.² The Commission found that service to Alaska and Hawaii is technically feasible and economically reasonable from the 110 degree W.L. slot, as well as locations to the west of that slot. The Commission said that a party acquiring channels at these locations should provide service to Alaska and Hawaii and, if it chose not to do so, would bear the burden of demonstrating that such service was either not technically feasible or not economically reasonable.³

The Commission has reiterated its commitment to promoting DBS service to Alaska and Hawaii in its notice proposing revisions to the rules governing DBS.⁴ In that notice, the Commission specifically sought comments "on how we can strengthen our rules regarding the provision of DBS service to Alaska and Hawaii."⁵

During the week of August 2, 1999, staff of the Governor's Office in Washington, D.C. met with representatives of EchoStar Communications Corporation and of DIRECTV, Inc. Those meetings were very useful and informative. Unfortunately, however, DBS service to Alaska remains limited and is not comparable to the service provided to other States. Alaskans have far fewer choices than other Americans do, often their signal reception is poorer, and the reception equipment required is often much larger.

The limited amount of DBS service is particularly distressing given the potential for satellite-delivered broadband internet services which DBS promises to deliver. In this regard, Congress has specifically stated that

² *Revision of Rules and Policies for the Direct Broadcast Service*, 11 FCC Rcd. 9712, 9761 ¶ 125 (1995). See 47 C.F.R. § 100.53(a), (b).

³ *Id.* at 9762 ¶ 128.

⁴ *Policies and Rules for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking*, IB Docket No. 98-21, FCC 98-25 (released February 26, 1998) ("NPRM").

⁵ *Id.*, ¶ 3. Commissioner Ness recently reiterated her commitment to making DBS service available to all geographic areas of the United States, including Alaska and Hawaii. *MCI Telecommunications Corp. and EchoStar 110 Corp.*, File No. SAT-ASG-19981202-0093, Call Sign S2232, Order and Authorization, FCC 99-109, Separate Statement of Commissioner Susan Ness (released May 19, 1999).

"Access to advanced telecommunications and information services should be provided in all regions of the Nation."⁶

The State urges the Commission to address this problem as quickly as possible to ensure that Alaskans and residents of other off-shore locations do not become second class citizens with respect to any Commission-licensed service. When the Commission adopted its rate integration policy, it believed that satellite services would lead to the integration of off-shore points into the Nation's communications systems.⁷ It is ironic indeed that, decades later, accomplishment of the Commission's goals in that regard may be frustrated with respect to DBS.

The State respectfully reiterates the position it took in its comments in this docket.⁸ The Commission should adopt the "off-shore states" policy proposed by the State of Hawaii. That policy would require licensees of DBS channels at eastern orbital positions to demonstrate that they are serving Alaska and Hawaii before they can provide service from any additional eastern DBS channel assignments beyond their existing assignments.⁹ Adoption of this policy would increase the likelihood that DBS service would come to Alaska and Hawaii in a manner comparable to other states without unduly burdening DBS licensees.

The Commission should also (1) expand the scope of geographic service obligations to include foreign DBS providers and geostationary satellite orbit satellites in the Ka-band; (2) clarify that its existing and proposed geographic service rules apply to DBS licensees granted satellite authorizations prior to

⁶ 47 U.S.C. § 254(b)(2). Congress also stated that "Consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services, including . . . advanced telecommunications services, that are reasonably comparable to those service provided in urban areas and that are available at rates that are reasonable comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3).

⁷ *Establishment of Domestic Communications-Satellite Facilities, Second Report and Order*, 35 FCC 2d 844, 856-66 (1972), *aff'd on recon.*, 38 FCC 2d 665, 695-96 (1972), *aff'd sub nom. Network Project v. FCC*, 511 F.2d 786 (D.C. Cir. 1975).

⁸ Comments of the State of Alaska, April 6, 1998.

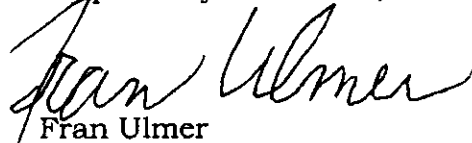
⁹ See NPRM at ¶ 34.

January 19, 1996, with respect to replacement satellites; (3) continue and clarify the provisions in Section 100.53(a) of its rules to require that DBS operators provide full service to Alaska and Hawaii by the end of their six-year western orbital slot milestones; and (4) clarify that the Commission's rules require that the DBS service provided to Alaska and Hawaii be equivalent in programming and power levels to the service provided to other States, so that Alaskans can use the same reception equipment as other Americans. Indeed, the requirement for equivalent service should extend to broadband internet services as well.

These conditions are critical to the ability of Alaskans, throughout the State, to obtain the full range of DBS services available to other Americans. Fulfillment of these four conditions is also necessary in order for Alaskans to receive DBS service at rates and with equipment comparable to such services elsewhere. Without prompt action, the Commission's long-standing policies of promoting the provision of communications services to all Americans will be dealt a significant blow.

Thank you for your attention to this matter. We very much appreciated the opportunity to meet with your staff last week to discuss this matter as well. Two copies of this letter are being submitted to the Secretary for inclusion in the public file.

Respectfully submitted,



Fran Ulmer
Lieutenant Governor

cc: Commissioner Gloria Tristani
Commissioner Michael Powell
Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Ms. Magalie Roman Salas, Secretary (2 copies)

2.

**State of Alaska Supplemental Reply Comments, IB
Docket No. 98-21 (filed Jan. 18, 2001)**

MB DOCKET NO. 05-181

CROWELL & MORING LLP

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ROBERT M. HALPERIN
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January 18, 2001

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BY HAND

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JAN 18 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

Re: In the Matter of Policies and Rules for the Direct Broadcast Satellite Service, IB Docket No. 98-21/

Dear Ms. Salas:

Transmitted herewith on behalf of the State of Alaska are an original and four (4) copies of the "Supplemental Reply Comments of the State of Alaska" for filing in the above-referenced docket.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,


Robert M. Halperin

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 18 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)

Policies and Rules for the)
Direct Broadcast Satellite Service)
)

IB Docket No. 98-21

**SUPPLEMENTAL REPLY COMMENTS
OF THE STATE OF ALASKA**

The State of Alaska ("the State" or "Alaska") submits these brief supplemental reply comments¹ to endorse the proposals set forth in the comments filed by the State of Hawaii in this docket on January 8, 2001.² Liberalization of the Commission's non-conforming use policy for western orbital locations – combined with strict enforcement of the Commission's geographic service rule – offers remote areas of Alaska the possibility not only of improved DBS service, but also of Internet access services that are urgently needed.

Hawaii recommends that U.S. and non-U.S. licensed DBS operators be permitted to use non-full CONUS orbital slots to provide any direct-to consumer services in unlimited quantity subject to a stringent geographic service requirement

¹ These supplemental reply comments are filed pursuant to the FCC's Public Notice of December 8, 2000 (FCC00-426) requesting further comment, in the Part 100 rulemaking proceeding, on non-conforming use of direct broadcast satellite service spectrum.

² Comments of the State of Hawaii, IB Docket No. 98-21 (filed Jan. 8, 2001) ("Hawaii Comments").

(that is, services using western non-full CONUS DBS orbital slots must be made available to consumers in Alaska and Hawaii at prices and service levels that are comparable with the services available to other consumers).³ It also recommends that U.S. and non-U.S. licensed DBS operators utilizing full-CONUS orbital slots be required to comply with the Commission's existing non-conforming use policy with a clarified geographic service requirement (that is, DBS operators using these slots must provide their services (whether conforming or non-conforming) to Alaska and Hawaii that are generally comparable in price, quality, and content to the services available on the mainland).⁴ In either case, DBS operators should be required to provide direct-to-consumer Internet access to consumers in Alaska and Hawaii that is comparable to the Internet access service they provide to other Americans.

Despite the best efforts of telecommunications carriers serving rural Alaska, due to the remoteness, sparse population, and the high costs of providing telecommunications services to them, rural Alaskans do not have the same access to information services as the vast majority of other Americans. According to the State's research, only about one-quarter (82 of the 323) of the communities in Alaska have any form of local dial-up or toll-free access to the Internet. For the residents of the other three-quarters of Alaskan communities, nearly all Alaska Natives, accessing the Internet means connecting via a long distance call to an ISP.

³ Hawaii Comments at 3.

⁴ *Id.*

The reality of this situation is that affordable Internet access does not exist in 75% of Alaskan communities.

Communities in rural Alaska differ substantially from rural communities in the rest of the United States. Most rural Alaskan communities are far smaller than rural communities elsewhere. Almost 300, or 90 percent of, Alaskan communities have fewer than 1,000 people. Eighty-seven communities – over a quarter of the total – have fewer than 100 people. Another 75 communities have a population of between 100 and 250 people.⁵ Outside of Anchorage, the population density of Alaska is only about 0.5 person per square mile.⁶

Most Alaskan communities are also far more remote and isolated than rural communities in other states. Most rural communities in Alaska do not have access to the three relatively urban areas of the State (Anchorage, Fairbanks, and Juneau) via road systems (either paved or gravel), and are thus isolated in a way relatively few other Americans are. State-wide, Alaska has only about 13,000 miles of public roads, only about 3800 miles of which are paved.⁷ Although Alaska is more than

⁵ These data were provided by the Alaska Department of Labor and Workforce Development, Division of Administrative Services, Research Analysis.

⁶ The state-wide population density of Alaska is approximately 1 person per square mile and roughly half of the State's population lives in Anchorage. "Labor Department Estimates Alaska's Population" <<http://sled.alaska.edu/akfaq/aksuper.html#pop>> (visited Dec. 8, 2000).

⁷ These data were provided by the Alaska Department of Transportation, Office of the Commissioner.

twice the size of Texas, its land road mileage is more like that of Vermont.⁸ Thus, many Alaskan communities can be accessed only by air or by water. Not only are these forms of transportation generally more expensive than land transportation, they are also frequently impassible because of weather conditions.

Because of the extremely small size and extraordinary remoteness of these communities, notwithstanding the efforts of local telecommunications service providers to do what they can, telecommunications with the world beyond the local community are limited. With no access to terrestrial lines, communications going outside the village must be transmitted via costly satellite circuits or only slightly less costly microwave relay circuits. Local exchange carriers or others in some rural areas where populations exceed 2000 residents have been able to establish Internet service, but they charge often at least twice that of the urban areas. For example, ISP service delivered over dial-up access in Anchorage averages \$20 a month. That service in Kotzebue, a regional hub of 3500 people nearly 520 miles northwest, costs \$45 a month.

In remote communities in rural Alaska, the prices for telecommunications services needed to access the Internet are far higher. A 56 kbps dedicated circuit in Anchorage costs \$115 to \$240 per month; that circuit in a remote community in rural Alaska in which it is available costs \$2750 per month. A T-1 circuit in Anchorage costs \$940 per month; in a remote community in rural Alaska, if it is

⁸ <<http://sled.alaska.edu/akfaq/aksuper.html>> (visited Nov. 13, 1999).

available at all, it costs between \$11,000-\$13,000 per month. The costs of starting an ISP in these communities can exceed \$20,000, not including the cost of satellite transponder space or services. The State continues to be committed to doing what it can to reduce the costs of bandwidth in these communities, but until a solution to that problem is found, we encourage the Commission to do what it can to facilitate the provision of Internet access to these communities.

It is the State's experience, however, that merely relaxing rules to permit DBS providers to offer Internet access services will not necessarily lead to the provision of these services in Alaska and Hawaii.⁹ For example, DirecPC, an affiliate of DBS provider DirecTV, trumpets on its web page in large letters that it is available everywhere in the United States, and then in small letters states "(Unless you live in Alaska or Hawaii)".¹⁰ EchoStar's suggestion in its supplemental comments of January 8, 2001, that the Commission should permit non-conforming uses without any further regulatory restriction and that no distinction should be made between CONUS and non-CONUS orbital slots, therefore, should be rejected.¹¹ Compliance with the Commission's geographic service rule is essential if

⁹ See, e.g., Hawaii Comments at 2 n.4, 3-5.

¹⁰ A copy of the relevant web page is attached. The DirecPC web page also permits users to search by state for the nearest access number to use with the DirecPC service. When one enters Alaska in the inquiry box, the response page appears with no responsive information. A copy of these pages is also attached.

¹¹ See Supplemental Comments of EchoStar Satellite Corporation, IB Docket No. 98-21 (filed Jan. 8, 2001).

all Americans are to benefit from any use of DBS facilities for Internet access or other non-broadcast purposes.

For all of the reasons set forth above, the State of Alaska endorses the proposals set forth in the Comments of the State of Hawaii filed January 8, 2001.

Respectfully submitted,

THE STATE OF ALASKA

A handwritten signature in black ink, appearing to read "Robert M. Halperin", is written over a horizontal line.

Robert M. Halperin
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202/624-2543

Attorneys for the State of Alaska

Of Counsel:

John W. Katz, Esquire
Special Counsel to the Governor
Director, State-Federal Relations
Office of the State of Alaska
Suite 336
444 North Capitol Street, N.W.
Washington, D.C. 20001

Date: January 18, 2001

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ATTACHMENT



Where can I buy it?

- What is DirecPC?
- What equipment do I need?
- How much does it cost?
- How does it work?
- Where can I buy it?
- People are talking
- The Scoop

○ It's everywhere. (Unless you live in Alaska or Hawaii)

As long as you live in the continental United States, you should have no trouble finding a local retailer or on-line merchant ready to sell you the DirecPC hardware you need to get started. That's the great thing about DirecPC -- it doesn't matter where you live; as long as you've got a clear line of sight to the Southern sky, you're ready to get started. (Click [here](#) to find a retailer near you, or [here](#) to choose one of DirecPC's preferred on-line retail partners.)

DirecPC also has a number of international partners who provide the service to businesses all over the world. Click [here](#) to find out if DirecPC is available in your area of the globe.

○ See DirecPC for yourself

So you're a try-before-you-buy kind of consumer. Our favorite kind! Once you get a taste of the kind of speed DirecPC has to offer, we're positive you'll drive home with a dish in the passenger seat. So take a look at our searchable dealer database to find a retailer in your area - all the retailers on our list have live DirecPC systems up and running, and can't wait to show you what the fastest Internet access system available nationwide can do.

○ No carryout near you? no problem -- have DirecPC delivered.

-If you'd rather just get started -- no muss, no fuss, just send the dish to me right away - we can help you there, too. Click [here](#) to see a list of our DirecPC preferred on-line retailers. They'll get you up and running in no time.

North Asia | Canada | USA | Europe | Mexico

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techsupport@direcpc.com.

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Find!

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The Closest Access Number according to your selected state is :

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of January, 2001, a copy of the foregoing Supplemental Reply Comments of The State of Alaska was served by first-class mail on the following:

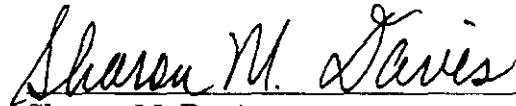
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Sharon M. Davis

3.

**Letter from Robert Halperin, Counsel for the State of
Alaska, IB Docket No. 98-21 (Aug. 24, 2001)**

ORIGINAL

MB Docket No. 05-181

EX PARTE OR LATE FILED

1001 Pennsylvania Avenue, NW, Washington, DC 20004-2595 • p202 624-2500 • f202 628-5116

crowell  **moring**

Robert M. Halperin
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AUG 24 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

043:smd
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August 24, 2001

BY HAND DELIVERY

EX-PARTE LETTER

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street S.W., Room TWB204
Washington, DC 20024

Re: In the Matter of Federal-State Joint Board on Universal Service,
CC Docket No. 96-45

In the Matter of Policies and Rules Concerning the Interstate,
Interexchange Marketplace, CC Docket No. 96-61

In the Matter of Policies and Rules for the Direct Broadcast Satellite
Service, IB Docket No. 98-21

Dear Ms. Salas:

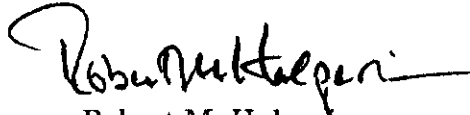
This letter is being filed, in duplicate for each of the above-referenced dockets, in accordance with the Commission's Rules, to report that yesterday, August 23, 2001, Marideth Sandler, Associate Director of International Policy, Transportation and Telecommunications, Office of the Governor of the State of Alaska, and I met with Commissioner Martin and Sam Feder of his Office to summarize the State's position on issues in these dockets. The attached document summarizes the meeting.

With respect to the State's E-rate waiver proposal pending in the Universal Service docket, the State urged the FCC to take action as quickly as possible. The State also presented its views, as set forth in its Petition and reply comments, which are already a matter of record in this docket, that (1) there is no statutory impediment to grant of the waiver request; (2) the requested waiver would not increase the costs to the universal service fund; and (3) the waiver would be competitively neutral.

Ms. Magalie Roman Salas
August 24, 2001
Page 2

In the event there are any questions concerning this notice, please
communicate with the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert M. Halperin", with a stylized flourish at the end.

Robert M. Halperin
Counsel for the State of Alaska

Enclosure

cc: Commissioner Martin
Sam Feder
Marideth J. Sandler

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STATE OF ALASKA

Meeting with Commissioner Martin – August 23, 2001

Background Facts:

Alaska is unique in many ways that make communications services of critical importance to public health, public safety, education, and economic development. At the same time, these unique features make the provision of communications services difficult and extremely costly.

- Alaska covers a vast landmass of 586,400 square miles. Alaska is larger than the next 3 largest states combined and is 488 times the size of the smallest state. If superimposed on the Continental U.S., Alaska would stretch from South Carolina to California and from Mexico to the U.S.-Canada border.
- Alaska is isolated from the Continental U.S. It is nearly equidistant from Japan, Europe and Washington, DC. At its closest point, it is only 2.5 miles from Russia and 800 miles from the North Pole.
- Alaska's geography is extreme. It has 5,000 glaciers. Ice fields cover four percent of the State. Much of Alaska is mountainous and Alaska includes the largest mountain in North America.
- Weather conditions are also extreme. Annual precipitation in some areas exceeds 200 inches. Annual snowfalls have been as high as 975 inches (over 81 feet) in some mountain areas. The coldest temperatures in the Nation have been recorded in Alaska – minus 80 degrees. Winds as high as 139 miles per hour have been experienced.
- Alaska has 323 communities. Only one community has more than 100,000 people (Anchorage); a handful of other communities have more than 10,000 people. Almost 300 communities have fewer than 1,000 people and, of those, about 85 – almost a quarter of all Alaskan communities – have fewer than 100 people.
- Alaska's population is about 627,000. Statewide, the population is about one person/square mile. Outside of Anchorage, the population density is about 0.5 person/square mile.
- Roads are scarce. Most communities – including the State capitol of Juneau – are not accessible by road. There are only about 13,000 miles of public roads, of which only 3800 are paved. Alaska, more than twice the size of Texas, has a road system equal in mileage to that of Vermont's. Alaska residents rely on other means of transportation – airplanes and ferries – which are expensive to use and often unavailable due to weather conditions.